

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAD MANUFACTURING LLC
Employer

and

Case 04-RM-230627

UNITED STEEL, PAPER, AND FORESTRY,
RUBBER MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, LOCAL UNION 8567,
AFL-CIO
Union

ORDER

The Union's Request for Review of the Regional Director's Decision on Objections and Certification of Results is denied as it raises no substantial issues warranting review.¹

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., June 27, 2019.

¹ In denying review with respect to the Union's Objections 1 and 2, we observe that the gravamen of both objections is that the Employer violated Section 8(a)(5) of the Act by making unilateral changes to an established past practice, without providing the Union notice and opportunity to bargain over the alleged changes. Such allegations are not properly litigable in a representation proceeding. See *Texas Meat Packers*, 130 NLRB 279, 279 (1961) (observing that unfair labor practice allegations are not properly litigable in a representation proceeding); *Virginia Concrete Corp., Inc.*, 338 NLRB 1182, 1185-1186 (2003) (applying the *Texas Meat Packers* rationale to alleged violations of Section 8(a)(5) of the Act).

In denying review with respect to Objection 4, we find that the evidence alleged in the Union's Offer of Proof, if introduced at a hearing, would not constitute grounds for setting aside the election. See 102.69(c)(1)(i) of the Board's Rules and Regulations. We find, under the circumstances of this case, that the Employer's alleged action—a single, isolated statement that it would be illegal for Union representatives to meet with employees at the Employer's facility—constitutes a simple misrepresentation of the law that does not rise to the level of a threat, and therefore is not grounds for setting aside the election, especially where the Employer permitted such a meeting two days later. See *John W. Galbreath & Co.*, 288 NLRB 876, 877 (1988); *Didlake, Inc.*, 367 NLRB No. 125, slip op. at 1 (2019).